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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE M. AMOS,

Defendant and Appellant.

A126861

**(Solano County
Super. Ct. Nos. FCR236663,
FCR252805, VCR202888)**

Kyle M. Amos was tried before a jury and convicted of first degree burglary and grand theft of a firearm. (Pen. Code, § 459, 487, subd. (d)(2).) He filed a notice of appeal from the judgment sentencing him to prison for four years, which referenced two additional cases that were disposed of at the same time. Appellant's court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We affirm.

BACKGROUND

On February 14, 2007, appellant pled no contest to a misdemeanor count of possessing over one ounce of marijuana in case no. FCR236663. (Health & Saf. Code, § 11357, subd. (c).) In exchange for the plea, a felony count of transporting marijuana was dismissed and appellant was placed on summary probation for three years. Probation was revoked on May 8, 2009, after appellant was charged with a felony count of

transporting marijuana in case no. VCR202888. (Health & Saf. Code, § 11360, subd. (a).)

In an information filed on November 19, 2008, appellant was charged with felony counts of first degree residential burglary and grand theft of a firearm. (Pen. Code, §§ 459, 487, subd. (d)(2).) He was convicted of both charges following a jury trial, at which the following evidence was adduced:

On February 13, 2008, Christina Dantin returned to her home in Fairfield at about 3:00 in the afternoon and discovered that her door had been forced open. A number of items were missing, including a large flat-screen television set, a safe, a laptop computer, and several firearms owned by her boyfriend Jarred Hailey, a sheriff's deputy in Sacramento County. Dantin immediately called the police.

Eloise Ayala, who lived across the street from Dantin and Hailey, had seen two men removing a television set on the day of the burglary. She identified appellant as one of the men during a photographic line-up conducted about seven days later.

On February 19, 2008, Officers Limon and Lockhart of the Folsom Police Department were conducting a narcotics surveillance of the house where appellant lived. Anthony Iodence drove up, opened his car's engine compartment, and walked into the house with appellant. The two men then emerged from the house, each carrying an object concealed in a white sock, and placed those objects in the engine compartment. Iodence drove away and was stopped by two other police officers, who search the car and found two handguns in the engine compartment, one of which belonged to Hailey and had been taken during the February 13 burglary. Officers searched appellant's house and found two guns in his bedroom that had also been taken during the February 13 burglary.

Appellant told his then-girlfriend, Amy Yarborough, that he and some friends had broken into the house but that he had not personally gone inside. Appellant's mother testified that appellant had been with her from 11:00 in the morning until 3:00 in the afternoon on the day of the burglary.

Appellant was convicted of burglary and grand theft as charged. The court sentenced him to the four-year middle term on the burglary count and stayed the sentence

on the grand theft count pursuant to Penal Code section 654. A 180-day concurrent jail term was imposed for the misdemeanor charge of possessing marijuana in case no. FCR252805, for which probation had been revoked. The felony count of transporting marijuana in case no. VCR202888 was dismissed.

DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we note that appointed counsel has filed a *Wende/Anders* brief raising no issues, that appellant has been advised by counsel of his right to file a supplemental brief, and that appellant has not filed such a brief. We have independently reviewed the entire record for error and find no arguably meritorious issues.

During the trial in the burglary case, the jury was properly instructed on the elements of the charged offenses, the burden of proof beyond a reasonable doubt, and the proper way to approach their duties and the evidence. Although the court instructed on general criminal intent with respect to the grand theft count, this could not have misled the jury when the specific intent required for theft was set forth in the instruction defining the elements of that crime. (See *People v. Avery* (2002) 27 Cal.4th 49, 54; *People v. Zamani* (2010) 183 Cal.App.4th 854, 880 (conc. opn. of McAdams, J.).)

The trial court properly exercised its discretion in sentencing appellant to a middle-term prison sentence and to a concurrent term on the misdemeanor case. It correctly stayed the sentence on the grand theft count. At appellate counsel's request, the trial court has corrected its award of presentence conduct credits to allow two-for-four credits under Penal Code section 4019,¹ rather than the 15-percent credits it originally

¹ As counsel noted in his *Fares* letter to the trial court, a recent amendment to Penal Code section 4019 allowing two-for-two credits does not apply due to appellant's conviction of first degree burglary, a serious felony. (Pen. Code, § 4019, subds. (b)(2) & (c)(2), operative Jan. 25, 2010.)

awarded under Penal Code section 2933.1.² (See *People v. Fares* (1993) 16 Cal.App.4th 954.)

We conclude that appellate counsel has fully complied with his responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.

² Because the court originally miscalculated the number of days appellant spent in actual presentence custody (awarding 55 days rather than the 39 days reflected in the probation report), the recalculation actually results in an award of fewer total presentence credits. The modification is to appellant's benefit, however, because the 15-percent limitation of section 2933.1 extends to conduct credits earned in prison, and it is now clear from the record that this limitation should not apply to appellant's case.